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IN THE

Supreme Court of the United States

October Term, 1951

No. 269

RALPH W. MOORE, *Petitioner*

v.

CHARLES F. BRANNAN, Secretary of Agriculture, and THOMAS J. FLAVIN, Judicial Officer of the United States Department of Agriculture, *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioner respectfully prays for the issuance of a Writ of Certiorari to review the judgment below.

Opinion Below

The Court affirmed *per curiam* the order of Judicial Officer of the Secretary of Agriculture. Its opinion is unreported but may be found in the record at p. 321. The opinion of the Judicial Officer is at p. 84A of the Record.

Jurisdiction

Petitioner's suspension under the Commodity Exchange Act of 1936, as amended, 7 U.S.C.A. Sec. 9 is reviewable on certiorari by this Court under 7 U.S.C.A. Sec. 10. The

judgment of the Court below was entered July 5, 1951. (R. 322) Under 28 U.S.C.A. Sec. 2101(c) the time within which application for certiorari must be filed is ninety days after entry of judgment.

Questions Presented

1. Whether petitioner's ninety day suspension from trading for composing a "Memo to The Press" (see p. 3 this Petition) left in the Press Club, at a broker's office and (by some undisclosed person) in the press boxes at the Department of Agriculture, was a false or misleading report delivered "for transmission through the mails or in interstate commerce" etc. in violation of 7 U.S.C.A. Sec. 13. The Memo predicted a Government lard-buying program and petitioner had a "long" position in lard at the time.

2. Whether the above acts constitute attempted manipulation of the market in violation of 7 U.S.C.A. Sec. 9; and whether "attempted manipulation" is constitutionally denounced.

3. Whether the weight of the evidence shows failure by petitioner to file open market reports.

4. Whether 7 U.S.C.A. Sec. 9 in granting unfettered discretion to suspend for an indefinite period a person failing to observe Secs. 6i and 9 of the Act is not violative of the Fifth Amendment both in failing to set forth definite standards of conduct and a definite limitation of penalty.

Statement of Facts

The Secretary of Agriculture, acting under 7 U.S.C.A. Sec. 9, entered an order dated November 15, 1950, ordering all contract markets to refuse trading privileges to Petitioner for ninety days. (R. 105-6A) A stay was ordered November 28, 1950 (R. 106A) and continued by the Court Below.

After service of charges and hearing thereon, the Secretary held that petitioner had violated the Commodity Exchange Act of 1936, 7 U.S.C.A. Sec. 6i, 9 and 13, (R. 84A-106). These three sections of the Act are set forth in the record at p. 85A, footnote 1. Petitioner was found guilty:

1. Of failure to report the market position of certain accounts alleged to have been controlled by him, in violation of 7 U.S.C.A. 6i. (R. 96-99A, findings 28-31).

2. Of having composed and circulated the following:

"MEMO TO THE PRESS:

"According to the President's September 26th statement of the estimated export availabilities of edible fats and oils and peanuts approximately $153,900,000 may be expended for the commodities. Of this amount lard will unquestionably account for the greater part of the funds to be spent.

"Currently only $5,263,246 has been used in the purchase of 29,261,900 pounds of lard. The amount spent in the same period for other edible fats and oils is considerably less than one-half million dollars.

"This leaves approximately $147,000,000 to be expended for the purchase of edible fats and oils to meet the caloric requirements of persons abroad as set forth in the President's statement.

"Faced with this demand for lard the Department of Agriculture recently passed up the opportunity of acquiring a large offering of lard by purveyors at prices well below present levels.

"With the promises to add to the exports of fats and oils to offset what now appears to be a curtailed grain export program, maximum purchases of fats and oils, with stress on lard are expected to be made from now until April.

"Reference: Glen Craig—State Department
Colonel Stanley Andrews—U.S.D.A.
Mr. E. J. Cronkhite—U.S.D.A.
Mr. George L. Prichard—U.S.D.A."

(R. 89A-90A).

Copies of this Memo were sent to an employee of Merrill Lynch, Pierce, Fenner & Beane, a brokerage house in Washington, D. C. (R. 90A, 134A-135A) Petitioner left 50 to 100 copies on a "hand-out" table at the National Press Club, (R. 90A). Approximately 16 copies of the Memo were placed, by whom is unknown, in press boxes at the Agricultural Department. (R. 91A)

3. This was held an attempted manipulation in violation of 7 U.S.C.A. Sec. 13 (R. 101A-102).

The evidence showed petitioner had taken an extensive "long" position in lard (R. 89A). The government's theory was that he "planted" the Memo where he thought it would do the most good. It claimed he intended to pass it off as an official press release of the Department. However, the Judicial Officer found it was entirely dissimilar in make-up to official releases. It did not contain the usual official heading and was on different size paper. Official releases do not contain names at the end. No one inside or outside the Department regarded it as an official release. (Finding 14, R. 92A) No press association used the story (Findings 12 and 13, R. 91A-92A). A Washington correspondent of a Chicago paper wired a description of the Memo to his editor, was told to check its origin, and thereafter the matter was dropped. (Finding 12, R. 91A) So far as the brokerage house was concerned, the contents of the Memo were not distributed to its various branches. Its only use was in an inter-office wire to Chicago. (Findings 8, 9, R. 90A).

As to the truth or falsity of the statements in the Memo, there is only Finding 16, that large purchases of lard were not contemplated as of October 1, 1947 "and the indication of such purchase was knowingly inaccurate, untrue and misleading." (Finding 16, R. 93A) In other words, the *prediction* was false.

The statute (7 U.S.C.A. Sec. 13) penalizes one:

"who shall knowingly or carelessly deliver or cause to be delivered *for transmission* through the mails or in interstate commerce by telegraph, telephone, wireless or other means of communication, false or misleading or knowingly inaccurate reports," etc.

There is no finding or evidence the petitioner delivered or caused to be delivered for transmission in any of the prohibited ways, the Memo in question. For all the evidence shows it might have been intended for strictly home consumption.

The evidence as to the Memo was utilized as proof not only of violation of Sec. 13 above, but also of Sec. 9 penalizing an attempt to manipulate the market. (7 U.S.C.A. Sec. 9)

As to the failure to report (Compl. par. 8-14, R. 17A-22A), the evidence shows failure to report petitioner's own account was inadvertent and non-willful. As to the controlled accounts, the weight of the evidence fails to show petitioner controlled these accounts.

The penalty section of the Act prescribes no limit to the power of the Secretary to suspend a violator from trading. It may be a life sentence, in his absolute discretion. (7 U.S.C.A. Sec. 9) Nor are definite standards of conduct set forth.

Reasons for the Allowance of the Writ

1. Petitioner's "Memo to The Press" expressed a prediction only and could not be a "false and misleading report" as these words are used in the statute. (7 U.S.C.A. Sec. 13) Also, there is nothing to show it was "delivered" for interstate "transmission". (Sec. 13, supra) While the present is not a criminal prosecution, the order herein imposes a substantial penalty and may become a precedent for invoking the criminal sanctions of Sec. 13. Also, it is difficult to perceive how the Memo could constitute "attempted manipulation." The decision below in affirming

on this point is in conflict with *General Foods Corp* v. *Brannan* (C.A. 7) 170 F. (2) 220.

Secs. 9 and 13 contain broad denunciations of undefined misconduct. (*Musser* v. *Idaho* 333 U.S. 95) The fear they engender is a substantial restraint upon the citizen and upon his right of free speech. (*Bridges* v. *California* 314 U.S. 252, 270; *Thomas* v. *Collins* 323 U.S. 516)

The penalty is equally vague as to length and equally oppressive upon the citizen. The argument made by the Government below that the right to trade on the commodity markets is a privilege granted by the Government, does not support a holding that no rules at all apply and that power of suspension of a man's livelihood for an indefinite period may be conferred without reasonable legislative guides. The present case is an extreme one and is worthy of this Court's review to mark the extreme limit of discretionary governmental action.

2. In the event this Court should grant review, petitioner is prepared to show that his failure to file the reports in question was inadvertent and that he was not given opportunity to achieve compliance as required by Sec. 9(b) of the Administrative Procedure Act. Further, the penalty is entirely disproportionate to any such lapse (*Midwest Farmers* v. *U. S.* 64 F. Supp. 91, 102)

Conclusion

The Writ should be granted.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 269

RALPH W. MOORE, PETITIONER

v.

CHARLES F. BRANNAN, SECRETARY OF AGRICULTURE, AND THOMAS J. FLAVIN, JUDICIAL OFFICER OF THE UNITED STATES DEPARTMENT OF AGRICULTURE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The decision and order of the Judicial Officer of the United States Department of Agriculture is reported in Agriculture Decisions, Vol. 9, No. 11, pp. 1299-1315 (R. 84A-106A). The opinion of the Court of Appeals (R. 321) affirming the Judicial Officer's order has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered on July 5, 1951 (R. 322). The petition for a

writ of certiorari was filed on August 22, 1951. The jurisdiction of this Court is invoked under 7 U.S.C. 10.

QUESTIONS PRESENTED

1. Whether the facts found by the Judicial Officer with respect to petitioner's false "Memo to the Press" constitute delivery "for transmission through the mails or in interstate commerce" of a false or misleading "report" concerning crop or market information or conditions, within the meaning of Section 9 of the Commodity Exchange Act, or an attempt to "manipulate" the market price of lard, in violation of Sections 6(b) and 9 of the Act.

2. Whether the statutory prohibition of attempted manipulation fails because the statute does not adequately define the conduct declared unlawful.

3. Whether the order suspending petitioner's trading privileges for 90 days is invalid under the due process clause of the Fifth Amendment because Section 6(b) of the Act, which authorizes such an order, prescribes no specific limit on the period of suspension.

STATUTE AND REGULATIONS INVOLVED

The relevant provisions of the Commodity Exchange Act of September 21, 1922, 42 Stat. 998, as amended by the Act of June 15, 1936, 49 Stat. 1491, as amended (7 U.S.C. 1, *et seq.*), are set forth in Appendix A, *infra*, pp. 11-14, and the pertinent provisions of the regulations of the Secretary of Agri-

culture issued thereunder are set forth in Appendix B, *infra,* pp. 14-18.

The Act, among other things, provides for designation of boards of trade as contract markets, with the requirement that all trading in futures be conducted on such designated markets; prohibits manipulation or attempted manipulation of the market price of a commodity; prohibits delivery in interstate commerce of false, misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce; requires the filing of reports of futures positions and transactions with the Commodity Exchange Authority; and authorizes the Secretary of Agriculture to direct all contract markets to refuse trading privileges to any person who has violated any of the provisions of the Act or of the rules and regulations made pursuant thereto.

STATEMENT

This proceeding was instituted by a complaint issued pursuant to Section 6(b) of the Commodity Exchange Act charging that the petitioner delivered for transmission in interstate commerce false, misleading, and knowingly inaccurate reports concerning market information or conditions that tended to affect the price of lard in interstate commerce, in violation of Section 9 of the Act, and that he attempted to manipulate the market price of lard in interstate commerce or for future de-

livery, in violation of Sections 6(b) and 9 of the Act. The complaint also charged that the petitioner violated Section 4i of the Act and the regulations promulgated thereunder by failing to submit reports of contract positions and transactions in his personal accounts and in accounts which he controlled. (R. 13A-23A.)

At the hearing on this complaint the Government introduced 50 exhibits and the testimony of 19 witnesses. The petitioner did not testify or introduce other evidence. The Judicial Officer [1] found that the evidence established the truth of the allegations of the complaint. He accordingly issued an order under Section 6(b) of the Act directing all contract markets to refuse to petitioner trading privileges thereon for a period of 90 days (R. 105A). The court below affirmed this order in a brief *per curiam* opinion (R. 321).

ARGUMENT

I

Under the stipulation between the parties, the findings made by the Judicial Officer were, with a few exceptions, accepted as true for the purposes of petitioner's appeal (R. 319A-320A), and the petition for certiorari does not challenge any finding

[1] The Judicial Officer had been delegated to act for the Secretary of Agriculture (10 F.R. 13769) under Section 3 of the Act of April 4, 1940, c. 75, 54 Stat. 81, 5 U.S.C. 516c, which provides that whenever a delegation is made under the statute "all provisions of law shall be construed as if the regulatory function or the part thereof delegated had (to the extent of the delegation) been vested by law in the individual to whom the delegation is made, instead of in the Secretary of Agriculture."

relating to petitioner's "Memo to the Press" which was not thus accepted as true. But petitioner contends (Pet. 4-5) that the statements made in this memorandum were merely a "prediction," and that the memorandum, although making "false" statements, did not constitute a false "report."

The memorandum asserted that "lard will unquestionably account for the greater part of the funds to be spent" by the United States Government in an export program to meet the caloric requirements of persons abroad; that about $147,000,000 remained "to be expended" for this program; that the Department of Agriculture was "faced with this demand for lard"; and that with the "promises to add to the exports of fats and oils * * * maximum purchases of fats and oils, with stress on lard are expected to be made from now until April" (R. 89A-90A).[2] These statements, which were false, misleading or knowingly inaccurate (R. 93A, 140A-143A, 163A-167A), were explicit and unqualified, not mere conjecture or prediction. In their totality, they unquestionably constitute a false "report" concerning market conditions.

Petitioner also contends (Pet. 5) that he did not "deliver" the memorandum for transmission in the mails or in interstate commerce within the

[2] The names of four government officials appeared at the bottom of the memorandum, but they had not furnished any information to the petitioner, had not authorized the use of their names, and had no knowledge of the memorandum until after it was issued (R. 90A-92A, 319A).

meaning of Section 9 of the Act. But the contrary is established by the Judicial Officer's findings 7-10 (R. 90A), all admitted by petitioner (R. 319A). These findings show that petitioner delivered 50 to 100 copies of the memorandum to the National Press Club in Washington, D. C., and left them on a table where material is customarily left for reporters; that petitioner had his secretary deliver two or three copies of the memorandum to the offices of Merrill Lynch, Pierce, Fenner & Beane, knowing that commodity news received by this firm is generally given wide distribution throughout the United States; and that this firm in the usual course of business teletyped the memorandum to the manager of its Lard Department in Chicago, Illinois.[3] Moreover, under the definition in § 2(a) of the Act (7 U.S.C. 2), delivery of the memorandum in Washington, D. C., was in itself a delivery in interstate commerce.

On October 1, 1947, the day on which petitioner circulated the "Memo to the Press" which he had composed, his net long position in lard futures in his own accounts was 740,000 pounds, and his net long position in lard in other accounts in which he had an interest was 1,060,000 pounds (R. 89A, 319A). He therefore would have benefited substantially from an increase in the price of lard, and

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[3] Sixteen copies of the memorandum were also placed in boxes assigned to news reporters in the press room of the United States Department of Agriculture, Washington, D. C., but the evidence did not show who did this (R. 91A)

the petition for certiorari does not challenge the finding (R. 93A) that the Memo to the Press was issued in an attempt to raise the price of lard. Petitioner's only contention in this connection (Pet. 5-6) is that the decision below that he "attempted to manipulate" the price of lard is in conflict with *General Foods Corporation* v. *Brannan,* 170 F. 2d 220 (C.A. 7).

We submit that the decision below is in direct accord with that in the *General Foods* case and that there is no conflict. In the *General Foods* case the court held that there is not an attempt to "manipulate" within the meaning of the Act when all that is shown is acts having as their purpose to "stabilize or peg" an "existing price resulting from natural forces" (170 F. 2d at 230-231). But the present petitioner was not trying to preserve an existing natural price; he was attempting to create a new and artificial price through dissemination of false market information. In the *General Foods* case the court expressly recognized (p. 224) that "the common criteria usual in *manipulation* or corner cases are deceit, *trickery through the spreading of false rumors,* concealment of position, the violation of express anti-manipulation controls, or other forms of fraud." (Emphasis supplied.) [4]

[4] Petitioner states (Pet. 6) that, if certiorari is granted, he is prepared to show that his failure to report transactions was "inadvertent" and that he was not given opportunity to achieve compliance as required by Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 1008(b). The Judicial Officer's findings 21-27, 31 (R. 93A-96A, 98A-99A), admitted by petitioner

II

The question raised by petitioner (Pet. 2, 6) as to whether the statutory prohibition of attempts to "manipulate" is "constitutionally denounced" is answered by *Bartlett Frazier Co.* v. *Hyde,* 65 F. 2d 350, 354 (C.A. 7), certiorari denied, 290 U.S. 654, where the court said:

> It is urged that the statute makes use of the term "manipulation" without defining what is meant by it, and that for this reason the statute is void. If there were merit in this suggestion it would seem that in the *Olsen* case [262 U.S. 1] the court would not have failed to discover it.

See also *Robinson* v. *United States,* 324 U.S. 282, 286; *United States* v. *Petrillo,* 332 U.S. 1, 5-8; *Lichter* v. *United States,* 334 U.S. 742, 785-787; and *Spies* v. *United States,* 317 U.S. 492, 499.

The Sherman Act prohibits "attempt to monopolize" (15 U.S.C. 2), and Congress may, even in a criminal statute, employ terms having a well recognized meaning but of sufficiently broad application to cover the evils at which the legislation is aimed. *Nash* v. *United States,* 229 U.S. 373, 376-378. In view of the numerous and divergent methods that could be devised to manipulate the price of

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(R. 319A), established that his failure to report was "wilful," not inadvertent. And cases of "wilfulness" are expressly excepted from the provisions of Section 9(b) of the Administrative Procedure Act requiring opportunity to achieve compliance.

a commodity, Congress necessarily used language of clear but general import. It has long been recognized that "spreading of false intelligence" is one of the "most common" methods of manipulating the market.[5]

III

Petitioner contends (Pet. 2, 6) that the authority granted the Secretary of Agriculture to suspend the trading privileges of a person who has violated the Act is invalid under the due process clause of the Fifth Amendment because the statute fails to set a specific limit on the period of suspension which the Secretary may impose. We submit that this contention is plainly without merit. Upon the basis of the evidence adduced at the hearing, the Secretary must issue an order that has a "reasonable relation to the unlawful practices found to exist" (*Irving Weis & Co.* v. *Brannan*, 171 F. 2d 232, 235 (C.A. 2)), and which will tend to effectuate the policy of the Act to prevent sudden or unreasonable fluctuations in the market price of the commodity involved (Section 3, 7 U.S.C. 5). The standards set forth in Sections 3, 6(b), and 9 of the Act furnish adequate guide to the Secretary in determining the period of suspension to be im-

[5] Emery, *Speculation on the Stock and Produce Exchanges of the United States* (1896), p. 176 (Vol. VII, No. 2, of "Studies in History, Economics and Public Law"); Clark, *Principles of Marketing* (3d ed. 1942), p. 537; Report of the Federal Trade Commission on the Grain Trade (June 25, 1926), Vol. VII, pp. 256-258, 273; *General Foods Corporation* v. *Brannan*, 170 F. 2d 220, 224 (C.A. 7).

posed. General standards of this kind meet due process requirements. *New York Central Securities Co.* v. *United States,* 287 U.S. 12, 24-25. Moreover, in this case the suspension ordered was for a definite period obviously not excessive in relation to petitioner's violations of the Act. Courts "will not pass upon the constitutionality of legislation . . . upon the complaint of one who fails to show that he is injured by its operation." *Coffman* v. *Federal Laboratories,* 323 U.S. 316, 324-325; *Lloyd* v. *Dollison,* 194 U. S. 445, 450.

CONCLUSION

The decision of the court below is correct and is not in conflict with the decision of any other court of appeals or of this Court. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1951.

APPENDIX A

The following sections of the Commodity Exchange Act are pertinent to this case:

Section 2 (a) (7 U.S.C. 2):

> For the purposes of this Act * * * The words "interstate commerce" shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession, or the District of Columbia.

Section 2 (a) (7 U.S.C. 4):

> For the purpose of this Act * * * The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

Section 4i (7 U.S.C. 6i):

> It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market unless such persons shall report or cause to be reported to the properly designated officer in accordance with the rules and regulations of the Secretary

of Agriculture (1) whenever such person shall directly or indirectly make such contracts with respect to any commodity, or any future of such commodity, during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Secretary of Agriculture; and (2) whenever such person shall directly or indirectly have or obtain a long or short position in any commodity or in any future of such commodity, equal to or in excess of such amount as shall be fixed from time to time by the Secretary of Agriculture.

Section 6 (b) (7 U.S.C. 9):

If the Secretary of Agriculture has reason to believe that any person (other than a contract market) is violating or has violated any of the provisions of this Act, or any of the rules and regulations made pursuant to its requirements, or has manipulated or is attempting to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any board of trade, he may serve upon such person a complaint stating his charges in that respect, to which complaint shall be attached or contained therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made directing that all contract markets until further notice of the Secretary of Agriculture refuse all trading privileges to such person, and to show cause why the registration of such person, if registered as futures commission

merchant or as floor broker hereunder, should not be suspended or revoked. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the Secretary of Agriculture, or before a referee designated by the Secretary of Agriculture, which referee shall cause all evidence to be reduced to writing and forthwith transmit the same to the Secretary of Agriculture. Upon evidence received, the Secretary of Agriculture may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in the order, and, if such person is registered as futures commission merchant or as floor broker hereunder, may suspend, for a period not to exceed six months, or revoke, the registration of such person. Notice of such order shall be sent forthwith by registered mail or delivered to the offending person and to the governing boards of said contract markets.

After the issuance of the order by the Secretary of Agriculture, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States circuit court of appeals of the circuit in which the petitioner is doing business a written petition praying that the order of the Secretary of Agriculture be set aside. A copy of such petition shall be forthwith served upon the Secretary of Agriculture by delivering such copy to him, and thereupon the Secretary of Agriculture shall forthwith certify and

file in the court a transcript of the record theretofore made, including evidence received. Upon the filing of the transcript the court shall have jurisdiction to affirm, to set aside, or modify the order of the Secretary of Agriculture, and the findings of the Secretary of Agriculture as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.

Section 9 (7 U.S.C. 13):

Any person who * * * shall manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any board of trade, * * * or who shall knowingly or carelessly deliver or cause to be delivered for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined not more than $10,000 or imprisoned for not more than one year; or both, together with the costs of prosecution.

APPENDIX B

The following regulations issued by the Secretary of Agriculture are pertinent to this case:

Controlled account.—An account shall be deemed to be controlled by a person if such per-

son by power of attorney or otherwise actually directs trading for such account [17 CFR § 1.3 (j)].

Persons holding or controlling open contracts of specified size; reports on Form 903.— Every person who holds or controls open contracts in any one future of any fat on any one contract market which equal or exceed the amount fixed by the Secretary of Agriculture (in § 9.21) for reporting purposes under section 4i (2) of the Commodity Exchange Act shall report to the Commodity Exchange Authority on Form 903. Such reports shall be made daily: *Provided,* That if on any day such person has no trades or transactions in any future of a fat previously reported and there has been no change in the open contracts of such person in any such fat, the last detailed report of such person shall be considered as his report on open contracts in such fat on all intervening days. Such person shall also make a report on Form 903 covering the day on which the amount of his open contracts in such future falls below the amount fixed in § 9.21 [17 CFR § 9.10].

Amount fixed for reporting on Form 903.— For the purpose of §§ 9.10 and 9.14, the amount fixed by the Secretary of Agriculture, under authority of section 4i (2) of the Commodity Exchange Act, for reporting on Form 903 is 250,000 pounds [17 CFR § 9.21].

Persons holding or controlling open contracts of specified size; reports on Form 203.— Every person who holds or controls open contracts in any one future of any grain on any

one contract market which equal or exceed the amount fixed by the Secretary of Agriculture (in § 2.21) for reporting purposes under section 4i (2) of the Commodity Exchange Act shall report to the Commodity Exchange Authority on Form 203. Such report shall be made daily: *Provided,* That if on any day such person has no trades or transactions in any future of a grain previously reported and there has been no change in the open contracts of such person in any such grain, the last detailed report of such person shall be considered as his report on open contracts in such grain on all intervening days. Such person shall also make a report on Form 203 covering the day on which the amount of his open contracts in such future falls below the amount fixed in § 2.21 [17 CFR § 2.10].

Amount fixed for reporting on Forms 203 and 204.—For the purpose of §§ 2.10, 2.11, 2.14, 2.16, and 2.17, the amount fixed by the Secretary of Agriculture, under authority of section 4i (2) of the Commodity Exchange Act, for reporting on Form 203 and Form 204 is 200,000 bushels [17 CFR § 2.21].

Persons holding or controlling open contracts of specified size; reports on Form 303.—Every person who holds or controls open contracts in any one cotton future on any one contract market which equal or exceed the amount fixed by the Secretary of Agriculture (in § 3.21) for reporting purposes under section 4i (2) of the Commodity Exchange Act shall report to the Commodity Exchange Authority on Form 303. Such report shall be made daily:

Provided, That, if on any day such person has no trades or transactions in any cotton future previously reported and there has been no change in the open contracts of such person in any cotton future, the last detailed report of such person shall be considered as his report on open contracts in cotton futures on all intervening days. Such person shall also make a report on Form 303 covering the day on which the amount of his open contracts in such future falls below the amount fixed in § 3.21 [17 CFR § 3.10].

Amount fixed for reporting on Forms 303 and 304.—For the purpose of §§ 3.10, 3.14, and 3.16, the amount fixed by the Secretary of Agriculture, under authority of section 4i (2) of the Commodity Exchange Act, for reporting on Form 303 and Form 304 is 5,000 bales [17 CFR § 3.21].

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RULES APPLICABLE TO DISCIPLINARY PROCEEDINGS

Complaints—Contents.—A complaint shall state briefly and clearly the allegations of fact which constitute a basis for the proceeding and shall specify with particularity the matters or things in issue. Complaints shall not include charges, implied charges, or requirements phrased generally in the words of the act, but the words of the act may be identified and quoted or used in preliminary recitals [17 CFR § 0.5 (b)].

Referees—Conduct.—The referee shall conduct the proceeding in a fair and impartial

manner and, save to the extent required for the disposition of ex parte matters as authorized by law, he shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate [17 CFR § 0.7 (c)].

Powers of referee.—Subject to review by the Secretary as provided elsewhere in this subpart, the referee, in any proceeding assigned to him, shall have power to:

(1) Rule upon motions and requests;

(2) Set the time and place of hearing, adjourn the hearing from time to time, and change the time and place of hearing;

(3) Administer oaths and affirmations and take affidavits;

(4) Issue subpenas requiring the attendance and testimony of witnesses and the production of books, records, contracts, papers, and other documentary evidence;

(5) Summon and examine witnesses and receive evidence;

(6) Take or order the taking of depositions;

(7) Admit or exclude evidence;

(8) Hear oral argument on facts or law;

(9) Do all acts and take all measures necessary for the maintenance of order and efficient conduct of the proceeding [17 CFR § 0.7 (d)].

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